



**Seminar organized by the Supreme Court of Ireland and
ACA-Europe**

**How our courts decide: The decision-making processes
of Supreme Administrative Courts**

Dublin, 25 – 26 March 2019

Answers to questionnaire: Greece



Seminar co-funded by the «Justice » program of the European Union

ACA Seminar

How do our courts take a decision: The decision-making process of supreme administrative courts

Dublin, 25-26 March 2019

Supreme court of Ireland

Questionnaire

I. Introduction

1.1 The seminar focuses on the process adopted by our National Supreme Administrative Courts to make their decisions. Each Court applies its own official rules, which are derived from the substantive law or its internal regulation or its official procedures. Additionally, each legal system is marked by its own culture and traditions, which demonstrates how the decision-making process evolves.

1.2 The purpose of this questionnaire and the seminar that will follow is to help us better understand the similarities and the deviations that exist between the decision-making processes of different Supreme Administrative Courts. For the purpose of comparison, we hope to obtain some useful information. We also hope that this information will help each Supreme Administrative Court to understand the process better, by which the Courts of other Member States of the EU are able to take their decisions.

1.3 The seminar to be held on 25 and 26 March 2019 in Dublin and for which this preparatory questionnaire is distributed, is considered interconnected with the one that will be organised by our German collaborators at the sidelines of the General Assembly, to be held from 12 to 14 March 2019 in Berlin. Although the issues raised inevitably overlap in some respects, it is expected that the Dublin seminar will focus on the Court's decision-making process, while the Berlin seminar will focus on access to the Supreme Court and its functions, including, for example, the question of whether procedural administrative law provides for "filters".

1.4 In addition, although this project is independent of ACA-Europe's transverse analysis on "The Quality of Judgments", there is an inevitable line between certain elements of the questionnaire prepared for this project and some aspects of this questionnaire.

1.5 Kindly note that to answer this questionnaire, it is not necessary (except for statistical questions regarding the number of cases in Part C) to take into account the procedures that ended after the provisional judgments were pronounced.

1.6 Moreover, if your institution exercises legislative functions, for example by giving your opinions on draft laws, and rules on the cases referred to the courts, it is not necessary to include the information related to legislative functions in the responses to the questions below.

II. Questions

A. General questions regarding your Supreme Administrative Court/Council of State

1. What is the official title of your Supreme Administrative Court/Council of State (“institution”)? Please specify your institution’s name in your national language and its English translation, if possible.

Symvoulío tis Epikrateias (in Greek), Council of State (in English).

2. What country/territory does it serve?

Greece.

3. Where is the institution based (i.e. its seat)?

Athens.

4. Please provide a link to the website of your institution (if applicable), with a link to the English or French versions or pages of the website, if applicable.

The website of the Council of State is: www.adjustice.gr. In fact, it is a common website for the Council of State and other administrative courts, which includes a part specific to the Council of State. The site has pages in English and the links to national institutions, international bodies and the Councils of State and supreme administrative courts around the world. The site particularly includes the links to the website of the Association of Councils of State and supreme administrative courts of the European Union and also that of International Association of Higher Administrative Courts.

B. The structure of your Supreme Administrative Court/Council of State

5. Please describe in brief:

(a) The main functions of your institution (e.g. court of first instance and of last instance, court of cassation or court of appeal);

The Hellenic Council of State has jurisdiction in the first and last instance for the appeals against regulatory decrees and acts as well as against certain acts of individual application. The Council of State is also an appeal court particularly as regards the law governing foreigners and refugees. The Council of State is also a court of cassation of judgments delivered by the administrative courts of appeal. Lastly, the Council of State exercises advisory functions as it gives opinions on draft regulatory decrees.

(b) The nature of your institution (for e.g. Supreme Administrative Court or Supreme Court having jurisdiction over other domains of law);

The Hellenic Council of State is the supreme court of the administrative branch.

and

(c) The position it holds in the overall judicial system of your country/territory

The Hellenic Council of State is the supreme court of the administrative branch in the same way as the Court of Cassation is the supreme court of the judicial branch. Lastly, the Court of Auditors is the third supreme court in Greece but with limited jurisdiction.

C. Number of cases

6. How many judges¹ work for your institution?

168 judges work for the Hellenic Council of State (including the President, 10 Vice-Presidents, 51 Counsellors of State, 58 masters of chambers and 48 auditors).

¹Kindly include only the number of judges and not the number of Advocate-generals (which is the subject of question 11) or the number of court officers/judicial clerks/legal researchers (which is the subject of question 13).

7. How many cases are² brought before your institution every year on average?

4000 approximately.

8. How many cases does your institution adjudicate³ every year on an average?

6000 approximately.

D. Internal organisation of the Supreme Administrative Court

9. Is your institution composed of chambers/divisions?

Yes.

10. If yes, please provide the following details:

a. How many chambers/divisions are there?

The Council of State consists of six sections as well as the plenary session of the litigation.

b. How many judges serve in each chamber/division?

Between 16 and 12 working in each section.

c. The nature of the specific domains of specialisation of your Supreme Administrative Court by chamber or otherwise (if applicable) (For e.g. commercial division, environmental division, etc.)

²In this question, the term “cases” refers to the average number of new cases filed each year, whether they are adversarial (where the judge(s) delivers a judgment on a litigation) or non-adversarial (when a case not pertaining to a legal litigation is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not solely handle cases related to administrative law (for example, civil and commercial law, criminal law, etc.) It includes cases in which the institution delivers its judgement in writing as well as in the course of a hearing. This term includes applications submitted to the Supreme Administrative Court before the implementation of any filtering procedure, if such a mechanism exists.

³Kindly indicate the average number of cases closed in your Supreme Administrative Court every year, whether by a judgment or any other decision terminating the procedure, whether in in writing or within the framework of a hearing.

Section 1 deals with cases related to social security as well as claims for damages-interests against the State, the territorial authorities and legal persons of public law.

Section 2 deals with tax-related cases.

Section 3 deals cases related to organisation of administration and the career development of government officials and other staff members of public corporation.

Section 4 deals with cases related to Economical and Alien laws.

Section 5 deals with cases related to protection of environment, cultural heritage and town planning. It also gives opinions on draft regulatory decrees.

Lastly, section 6 deals with cases related to public contracts (except for proceedings for abuse of authority directed against the acts preceding the public procurement, which are shared between the 2nd and the 4th section of the Council of State), expropriations and requisitions, to remuneration of staff members of public corporations and to the recovery of State debts.

d. Do judges change chambers/divisions? If yes, how is the transfer decided?

Yes. The transfer of judge from one section to another is, in principle, determined by the requirements of the department. However the requests and duration of judges is also taken into account. The allocation of judges in the sections of the Council of State is carried out by the order of the plenary session of the Council of State. The same applies to the transfer of judges from one section to another.

e. Can a judge be simultaneously posted to multiple Chambers?

Not in principle.

f. Are there many different levels of chambers, for example an “ordinary chamber” and a Chamber for Constitutional Review?

The ordinary session of sections has five judges. For more important cases the section has seven judges. There is a plenary session of litigation for the most important cases, which comprises at least 17 judges. For the cases of extreme importance, the plenary session of litigation comprises at least 25 judges, which belong to different sections.

When a section will deliver a judgment that a legislative provision is contrary to the Constitution, it must refer the case to the plenary session of litigation.

g. How many judges are usually allocated for examining and judging a matter, on an average?

Five.

h. Does the number of judges allocated to decide cases vary?

Yes.

If yes:

(i) On the basis of which rules or factors?

The general rule is that the cases are examined by the sections that comprise 5 judges.

(ii) Who decides the number of judges that are appointed to examine and judge a case in particular?

It is the presidential decree 18/1989 governing the Council of State that provides for the number of section judges in general.

i. Is there a procedure permitting certain cases to be sent to an enlarged board of appeal or to a plenary session? If yes, how is the judgement made and how many judges decide the matter?

The aforementioned decree provides, on the one hand, that the section of five judges can refer a case on account of its importance, to the section of seven judges and on the other hand, that the Vice-President who chairs a section, may directly refer a case to the section of seven judges. Similarly, the cases that are extremely important can be referred to the plenary session of litigation, either by a decision rendered by the section of five or seven judges or by the President of the Council of State.

j. Are judges confined to other specific role (e.g. rapporteur, case in-charge, other specific responsibilities, etc.) for a case in particular?

If yes, please specify the other roles and explain how they are assigned.

For each case, the judgment of which is delivered in a section or at a plenary session of litigation, one of the judges of the section/session is called a Rapporteur. The Rapporteur of each case is appointed by the judge who chairs each session (in principle a Vice-President or the President of the Council of State).

k. How important is the role of the President of the Court for deciding:

- (i) the allocation of cases to chambers or benches of judges;
- (ii) the number of judges assigned to examine and judge a case in particular;
- (iii) the allocation of additional cause lists to the judges (see (f) above);
- (iv) all other information you consider relevant in this context. For example, are there other special benches, General Meetings or benches of judges to whom cases are allocated.

The allocation of cases to the sections of the Council of State is determined by the jurisdiction of each section. The jurisdiction of sections is defined by the presidential decree 361/2000 and was presented, in its broad outlines above (D10 c). However, the President of the Council of State can definitively determine the section competent for a case when a section considers itself as incompetent, which is rather rare. Moreover, the President of the Council of State can directly refer a case to the plenary session of litigation of the Council of State on account of its importance. Lastly, the President of the Council of State appoints the Rapporteur of all the cases ruled by the plenary session of litigation of the Council of State (those which he himself referred to this session and those that were referred to by the sections).

11. Does the post of an Advocate-General exist in your legal system? If yes, please indicate:

The Advocate-General office does not exist in the Hellenic Council of State.

(i) the number of Advocate-Generals or members executing equivalent roles in your institution;

(ii) the role of the Advocate-General in your institution; and

(ii) the extent to which the Attorney-General participates in the procedures before your institution.

E. Research and administrative assistance

12. What is the level of research and/or administrative assistance that your institution receives?

The legal research assistance of the Council of State is provided by auditors of the Council of State who are full judges and constitute the first rank of judges of the Council of State. In addition there is a case-law and research executive committee at the Council of State, which is chaired by the Master of chambers, who is assisted by at least two auditors. This executive committee identifies, among other things, the case-law of the Council of State and drafts the bulletin of its case-law. The executive committee also monitors the case-law of the European Court of Justice, the Strasbourg Court of Justice and, in general, courts of justice of different foreign countries. The administrative assistance of the Council of State is provided by its secretariat.

13. How many officials provide assistance for legal research to your institution?

The Council of State currently comprises 48 auditors.

14. Do the officials who provide assistance for legal research to your institution also provide administrative assistance?

The auditors of the Council of State only provide legal research assistance. The secretariat of the Council of State, in principle composed of court officials, provide administrative assistance.

15. Are the legal research and administrative assistance services common (i.e. shared between judges) or assigned individually to judges or is there both a common service and researchers assigned to particular judges? Please explain.

Each Councillor of State assigned to a case is allocated an auditor to assist in the preparation of the case. On the contrary, the administrative assistance services are mutualised.

16. If legal research and administrative assistance is provided individually to judges, is there also a research and documentation service or equivalent service providing additional common research assistance?

The aforementioned case-law and research executive committee is present at the Council of State.

17. To what extent do the assistants/legal secretaries help the judges in your institution, supposing that this be the case, especially in matters concerning:

- (a) preparing documents prior to the hearings, such as a note meant to help the judge before the trial of a case;
- (b) carrying out legal research to help the judge reach a decision in a case;
- (c) discussions regarding certain aspects of a case with a judge, verbally or in writing;
- (d) examination and evaluation of applicable legislation;
- (e) analyses of comparative law;
- (f) writing parts of judgements;
- (g) proposal of suggestions of judgements or preliminary judgements for examination by the judge(s);
- (h) any other element that you consider relevant in this context.

It is the responsibility of the auditors to investigate the cases. They first ensure that the administration file is complete and ask the parties, if necessary, to bring the documents that they consider essential for the investigation of the case. They carry out the research later and study the applicable legislation, as well as the relevant case-law. If the case is ready, they conduct the analyses of compared law. They finally draft a report on the factual questions and matters of law raised by the case and express their opinion on the pleas that are automatically raised. Lastly, the auditors often discuss

the aspects of the case with the Counsellors of State. On the contrary, they do not draft any part of the judgements.

F. Hearings

18. Is a hearing conducted in all cases?

A public hearing is conducted in almost all cases.

19. If a hearing is not conducted in majority of the cases:

(a) What is the percentage of cases usually involving a hearing?

It varies from one year to another and it is difficult to give a percentage. Currently 80% to 90% of the cases result in public hearings. In 2016 the number of cases resulting in public hearings did not cross 55% of the total number of cases studied by the Council of State, but this is an exception.

(b) On what basis (official rules or informal decisions) is the decision made to conduct a hearing in a case?

The presidential decree 18/1989 provides for the instances where a case may be studied without a public hearing. These are cases which do not pose legal difficulties because they are manifestly inadmissible or for which there is a settled case-law of the Council of State resulting either in the rejection of the appeal or annulment of the contested act.

(c) Can the parties to a case request a hearing? If yes, what is the importance, or what are the consequences, of such a request?

The applicant can always request for a public hearing. To the extent that an appeal has been dismissed without a public hearing by an order, the applicant may request for a public hearing but the legal costs are much higher in this case.

20. Do the judges deliberate before a hearing? If this is the case, do these deliberations occur in all cases or in certain cases?

The judges do not deliberate before the hearing but after it.

21. Are time limits imposed on parties for making the concluding oral submissions in your institution?

During the hearing, an oral discussion takes place. Otherwise the procedure is carried out through written documents. The party may however address the rapporteur of the case before the hearing and present him their point of view.

22. Are the parties authorised to address the Court during an uninterrupted period? If so, for how much time?

The parties are authorised to address the Council of State separately from the session of appeal and until a few days after the hearing.

23. Are the arguments carried out in the course of a hearing limited to the questions mentioned in the depositions or the written statements of the parties or can they involve arguments on broader legal themes between the advocates/one party and the court?

The discussions during the hearing are, in principle, limited to the questions indicated in the written submissions of the parties and to the questions posed by the Rapporteur in his report.

24. Are parties authorised to submit other written briefs after a hearing?

Yes, within a fixed period of time after the hearing of each case by the President of the section.

25. Can a judge be excluded from a proceeding by reason of a legal opinion expressed in the course of a hearing and giving rise to the perception of bias?

Parties may request the exclusion of a judge from a procedure even on the basis of a legal opinion expressed at a hearing. This kind of request rarely succeeds.

G. Written submissions of the parties

26. What is the usual length and the level of detail of the written briefs of parties submitted to your institution? Please indicate the approximate number of pages (line spacing 1.5) of a “standard” written statement of the case.

- | | |
|---------------------------|--------------------------|
| 0 – 5 pages | <input type="checkbox"/> |
| 5-10 pages | <input type="checkbox"/> |
| <u>10-20 pages</u> | <input type="checkbox"/> |
| 20-30 pages | <input type="checkbox"/> |
| 30-40 pages | <input type="checkbox"/> |
| 40-50 pages | <input type="checkbox"/> |
| 50 + pages | <input type="checkbox"/> |

20. Is there a maximum length for the written statements submitted by the parties in a case? If yes, please explain.

Often the appeals and the statements of case are huge in number, even for legal issues on which there is abundant case-law. Since 2012, Decree 18/1989 governing the Council of State provides that appeals must include a summary of the legal issues raised by the case not exceeding 200 words. In general, the lawyers are against limiting the number of pages for appeals and other statements of case.

H. Examination of the case

21. Can your institution raise points of law on its own initiative (i.e. ex officio) or is it restricted to the matters raised by the parties to the case?

Yes, the Council of State can raise points of law ex officio.

22. In what way are arguments, deliberations and decision-making structured in your institution?

After the hearing or before the expiry of the period for possible additional conclusions of parties, there is the deliberation and then the Rapporteur draws up the decision later.

23. Does your institution deliberate in different languages? If so, please explain. For example, does your institution have multiple official languages?

The Council of State deliberates in Greek.

24. Are there rules, procedure or conventions which govern the conduct of arguments and votes?

If yes, please explain the rules applicable, etc.

It is the President of the section or the plenary session of litigation that directs the discussions during the deliberation. The Rapporteur examines all the issues raised by the case, the President allows those judges to speak who wish to pose a question or express an opinion and then voting is carried out. The youngest judge (from the point of view of the duration at the Council of State) votes first and so forth till the President.

25. How are preferences for particular issue communicated between judges?

During the deliberation, the judges express their opinions on all the issues raised by the case.

26. When a hearing is held, to what extent does the hearing (as opposed to the written briefs) influence the arguments, deliberations and the decision-making by the Court?

The hearing influences the deliberations and decision-making of the Council of State as it often helps to clarify certain aspects of the case but the Council of State examines the cases, largely on the basis of their appeals and the written statements of case of parties.

27. Are there other procedural rules or conventions which, according to you, have a significant impact on how cases are examined?

No.

I. The judgement of the institution

28. Is the judgement delivered in the name of the institution or does each individual judge assigned to the case in question have the option of giving a separate judgement?

The judgement is delivered in the name of the institution.

29. If the judgement is delivered in the name of the institution, does a judge author it for the institution? If this is not the case, please explain how the judgement of the Court is authored for your institution. Do official rules or informal practices apply to the matter?

The Rapporteur of the case authors the decision.

30. In what way is the judgment/reasoning of the Court recorded?

The decision is authored and then the decision taken in a public session is rendered.

31. Does your highest institution make the distinction between the Judgement (i.e. the grounds) and the Order (i.e. the operative part of the judgment of the court)?

The Council of State differentiates between the reasons and operative part of the decisions.

32. Are there other distinctions of this type in the judgments given by your institution?

No.

J. Time periods for the decision-making process

33. How much time on an average elapses between the examination of a case by your institution and the delivery of a judgement? Please indicate the approximate time period between the cognisance of a case in the Supreme Administrative Court (rather than the date on which a case is submitted for the first time to a judge for examination) and the definitive resolution of the case by, for example, the delivery of a final judgment.

There is a difference of at least four years between the cognisance of the case in the system of the Council of State and the definitive resolution of the case.

34. Is there a specific mandatory time period which must be complied with for rendering the decision in all cases? If yes, please explain.

There is no specific time period which must be complied with for rendering the decision in all cases. However the Council of State regulation provides that the Rapporteur authors and delivers the decision to the project secretariat within eight months after the delivery of deliberation and that the President pronounces the judgment, insofar as possible, in two months after the decision draft is submitted to the Secretariat.

35. Are there mandatory time limits for certain categories of cases? If yes, please indicate the categories of cases and the time limits in question.

There are specific mandatory deadlines for provisional protection in cases related to public procurements. The hearing is scheduled within thirty days from the filing of appeal, the operative part of the order is pronounced within seven days from the hearing and the order itself (with reasons) must be delivered within twenty days after the hearing. Additionally, the hearing date for examination of appeals filed in these cases (after the urgency procedure) must be finalised within three months after the filing of appeal. In general, the provisional protection in all the categories of litigations is always granted as soon as possible.

36. If no time limit is imposed for deciding cases, is there a time period considered appropriate for the decision-making process? If yes, please explain.

37. If time limits are imposed on your institution for the decision-making process, is it on occasion difficult for the Court to comply with these time limits? If yes, what are the main reasons that explain these difficulties?

It is sometimes indeed difficult for the members of the Council of State to respect the aforementioned deadlines (in the answer to question 34) provided for in the Council of State regulation. The main reasons that explain these difficulties are, on the one hand, the work load on its members as well the obligation of a section to await the decision of a larger session having examined a case raising the same questions of law.

38. If no time limit is imposed for deciding cases, but a certain duration, by reason of conventions or practices, is considered appropriate for the decision-making process, is it difficult for the Court sometimes to comply with this time limit? If yes, what are the main reasons that explain these difficulties?

K. Evolution over time

39. Have the procedures which you described in the previous responses evolved in a significant manner over the last five years?

The procedures described above have not evolved in a significant manner over the last five years. In recent years however, the Council of State has made significant efforts to reduce the duration of time elapsed between the cognisance of the case in the system of the Council of State and the definitive resolution of the case. These efforts start to produce the anticipated results. The reduction in time required for definitive resolution of cases was possible due to efforts taken by all the judges of the Council of State and the government officials of its Secretariat as well as the legislative provisions voted for in 2010 having transferred certain categories of litigations to administrative tribunals and courts of appeal. The effects of these legislative provisions become more visible with time. Moreover, the legislative provisions of 2012 provide that the parties may request the Council of State for the case to be ruled faster if a public hearing has not been scheduled within 24 months after the appeal is filed. Also, a provision is made for a compensatory appeal by the same provisions in case of unjustified delays in delivering justice. Lastly, from 1st December 2018, the government officials and the judges of the Council of State appointed for this purpose prepare a bulletin for each registered appeal, which contains some preliminary information as regards the type of case, its difficulty, similar cases already pending with the Council of State, its urgency as well as possible related inadmissibilities. The order destined to facilitate the preparation and monitoring of all the cases, shall be applied during the probationary period from 1.12.2018 until 30.6.2019. At the end of this probationary period the results of the order shall be evaluated and the necessary provisions for its possible improvement shall be made.

40. If yes, have these changes had an influence on the way in which cases are examined and adjudicated?

41. Do these changes constitute an improvement, according to you? If yes, please explain.

I. Other comments or observations

42. Do you believe that certain aspects of your institution and/or its specific decision-making processes have not been addressed in the questions above, or do you wish to provide contextual information which might help us understand the decision-making process practiced in your court?

Thank you for filling this questionnaire.